

June 25, 1975

lead to the swift hiring of up to two new employees in thousands of small businesses.

Under the NSB plan, after Congress enacted legislation which would authorize the plan, small businesses would be notified that they could hire one or two new employees and take a tax credit of up to 50 per cent of the cost of the new employees, up to a maximum of \$20,000.

Also included in the plan would be a special tax cut for several million companies that earn less than \$25,000 a year, provide a 20 per cent investment credit for several hundred thousand small manufacturers, for thousands of new businesses, being formed despite the recession, grant a write-off of up to \$25,000 a year for the first three years.

Stewart put the present situation well when he said "As the Federal Reserve Board kept slamming harder and harder on its wornout brakes, trying to hold the big business juggernaut, as usual it did not seem to notice that its small business passenger was half-way through the windshield. It is now time for Congress to enact 'seat belt' legislation for small businesses."

"By the time data collectors catch up with small business reality," he said, "it is far, far too late for federal counter-cyclical action."

Which is true. By the time that unemployment figures go from the grassroots to Washington level through the mounds of paper work required in our bureaucracy, they are long since outdated. Meanwhile, the actual February unemployment figure at the national level could be far higher, or it could even be lower.

Sometimes, it can be a long way—and a long time—between Washington and the grass roots.

By Mr. TUNNEY:

S. 2008. A bill to protect the constitutional rights and privacy of individuals upon whom criminal justice information has been collected and to control the collection and dissemination of criminal justice information, and for other purposes. Referred to the Committee on the Judiciary.

Mr. TUNNEY. Mr. President, today Congressman Don Edwards of California, chairman of the House Judiciary Subcommittee on Civil and Constitutional Rights, and I are introducing identical bills to control the collection and dissemination of criminal justice information and to protect the privacy and the constitutional rights of the individuals upon whom such information has been collected.

This legislation represents the culmination of 4 years of intensive investigation by both subcommittees into the abuses created by the increasingly automated dissemination of criminal justice information. The present bill is a compromise between the provisions of the two bills introduced earlier this year in both the House and Senate—H.R. 61, S. 1428 and H.R. 62, S. 1427—measures which were originally introduced last year by the Justice Department and Senator Ervin.

The new legislation incorporates the best features of the Justice Department and Ervin bills. It represents an awareness of both the legitimate needs of law enforcement to have timely and accurate information and the constitutional right of American citizens to have their privacy protected. It is stronger than the old Justice Department bill in its protection of the individual. It is less complex than the Ervin bill and more con-

ducive to the preservation of efficient law enforcement.

The purpose of the legislation is to provide a uniform body of law governing the exchange of criminal justice records, intelligence and investigative information and the release of such information to the public. It sets out specific restrictions on the dissemination of such information to other agencies. In accordance with its provisions, only conviction records can be freely distributed to law enforcement agencies. Acquittal and arrest records can be dispersed for specified purposes and to authorized personnel.

The legislation requires the sealing of criminal records that are out of date or that relate to arrests that are not followed by criminal charges or to arrests followed by charges not prosecuted in a timely manner. It gives any individual the right to review criminal records concerning him or her which are maintained by law enforcement agencies and the right to institute proceedings to correct or modify inaccurate or incomplete information. It includes civil remedies for persons aggrieved by violations of any of its provisions and criminal penalties for those who knowingly violate the act.

The bill severely limits the types of criminal records that can be made available to such law enforcement agencies as credit bureaus, State licensing bureaus or employment agencies, and includes restrictions on the purposes for which these agencies can use the records. It also contains provisions limiting the circumstances under which intelligence and investigative information concerning an individual may be collected and maintained and places strict controls on the use and dissemination of this information to other agencies.

The measure provides for the creation of a Commission on Criminal Justice Information with the responsibility for implementation and enforcement of the act. The members of the Commission are to be appointed by the President and confirmed by the Senate, and a majority of the membership is to be drawn from State and local law enforcement agencies, the principal users of the information regulated by the act. The Commission will have the authority to issue regulations governing the collection, use and dissemination of criminal justice information by all agencies subject to the act, including Federal agencies. Specifically, it will have the authority to decide such controversial issues as the extent to which Federal law enforcement agencies may perform telecommunications and identification functions for interstate systems.

The legislation recognizes the principle that each State should be free to regulate the collection, use and dissemination of criminal records consistent with uniform national standards. It permits each State to establish a board or agency to enforce the provisions of the act within that State. The national Commission would defer to such a board with respect to enforcement of the act. In addition, the bill permits States with laws that are stricter than the Federal law to enforce their own provisions concerning transactions within that State.

Finally, like its two predecessors, the measure guarantees that the public and the press will continue to have access to police blotters and court records, information which has traditionally been within the public domain.

Because of the increasing use of computers for processing and transmitting criminal justice information, the need for this legislation is critical. The recent Watergate revelations have made us all painfully aware that raw intelligence and investigative files in the hands of the wrong people including some Government officials can result in grave injustices to innocent people. In addition, a number of court cases in the last year have underscored the fact that abuses of individual liberties do occur from widespread dissemination of inaccurate or incomplete criminal records.

Hearings on this bill are scheduled to be held by the House subcommittee on July 14 and 17 and by the Senate subcommittee on July 15 and 16. Congressman Edwards and I are conducting these hearings in an effort to accommodate the Justice Department and State and local criminal justice agencies in their desire to have a specific criminal justice bill enacted before September 27, 1975, when the Privacy Act of 1974 goes into effect.

Mr. President, I ask unanimous consent that the criminal justice data banks legislation be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2008

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Information Control and Protection of Privacy Act of 1975."

TITLE I—PURPOSE AND SCOPE

FINDINGS

SEC. 101. The Congress hereby finds and declares that—

(a) The responsible maintenance, use, and dissemination of complete and accurate criminal justice information among criminal justice agencies is recognized as necessary and indispensable to effective law enforcement and criminal justice and is encouraged.

(b) The irresponsible use or dissemination of inaccurate or incomplete information, however, may infringe on individual rights.

(c) While the enforcement of criminal laws and the regulation of criminal justice information is primarily the responsibility of State and local government, the Federal Government has a substantial and interconnected role.

(d) This Act is based on the powers of the Congress—

(1) to place reasonable restrictions on Federal activities and upon State and local governments which receive Federal grants or other Federal services or benefits, and

(2) to facilitate and regulate interstate commerce.

DEFINITIONS

SEC. 102. As used in this Act—

(1) "Automated" means utilizing electronic computers or other automatic data processing equipment, as distinguished from performing operations manually.

(2) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.

(3) "The administration of criminal justice" means any activity by a criminal justice

CONGRESSIONAL RECORD — SENATE

June 25, 1975

twelve months of such employment (whether or not consecutive) or before the close of the twelfth calendar month after the calendar month in which such employee completes twelve months of employment with the taxpayer, the tax under this chapter for the taxable year in which such employment is terminated shall be increased by an amount (determined under such regulations) equal to the sum of the amounts allowed under subsection (a) for such taxable year and all prior taxable years attributable to wages paid to that employee.

(2) RECAPTURE NOT TO APPLY IN CERTAIN CASES.—

(A) IN GENERAL.—Paragraph (1) does not apply to—

(i) a termination of employment of an employee who voluntarily leaves the employment of the taxpayer,

(ii) a termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of such employment, unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

(iii) a termination of employment of an individual, if it is determined under the applicable State unemployment compensation law that the termination was due to the misconduct of such individual.

(B) CHANGE IN FORM OF BUSINESS, ETC.—For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) by a transaction to which section 381 (a) applies, if the employee continues to be employed by the acquiring corporation, or

(ii) by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

(3) SPECIAL RULE.—Any increase in tax under paragraph (1) shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any other credit allowable under this subpart.

(4) DEFINITIONS.—For purposes of this section—

(1) WAGES.—The term 'wages' means cash remuneration (including amounts deducted and withheld).

(2) NEW EMPLOYEE.—The term 'new employee' means an individual first employed by the taxpayer after June 30, 1975, whose employment does not fill a vacancy existing prior to July 1, 1975, and the employment of whom does not displace any other individual from employment by the taxpayer.

(3) APPLICATION WITH OTHER SECTIONS.—No credit is allowable under subsection (a) for any amount for which a deduction is claimed under section 162 or 212, or for which a credit is claimed under section 40, for the taxable year.

(4) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(b)(1) Section 56(a)(2) of such Code (relating to imposition of minimum tax) is amended by striking out "and" at the end of clause (vi), by striking out the semicolon and "and" at the end of clause (vii) and inserting in lieu thereof a comma and "and", and by inserting after clause (vii) the following new clause:

"(viii) section 45 (relating to credit for new jobs); and"

(2) Section 56(c)(1) of such Code (relating to tax carryovers) is amended by striking out "and" at the end of subparagraph (B), by striking out "exceed" at the end of subparagraph (G) and inserting in lieu thereof "and", and by inserting after sub-

paragraph (G) the following new subparagraph:

"(H) section 45 (relating to credit for new jobs), exceed".

(3) Section 6096(b) of such Code (relating to designation of income tax payments to Presidential Election Campaign Fund) is amended by striking out "and 44" and inserting in lieu thereof a comma and "44 and 45".

(c) The table of sections for such subpart is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 45. New jobs.

"Sec. 45A. Overpayment of tax."

SEC. 2. The amendments made by the first section of this Act apply to taxable years ending after the date of enactment of this Act.

[From the Biloxi-Gulfport (Miss.) Herald,

March 23, 1975]

ECONOMIC PLAN MAY BE TOO SENSIBLE

(By Robert McHugh)

The professors of economics and the politicians in Washington are applying poultices of every description to the wounds in the nation's economy.

Some of them sound like the western cowboys' favorite remedy for healing gaping sores left by the horn of a steer—five cc's of chewing tobacco.

It is indeed a gaudy mixture being prepared on Capitol Hill. We are looking at a \$5.9 billion public jobs bill, a billion or more for health insurance for the unemployed, and a \$2.5 billion railroad rebuilding plan, along with the tax cut which nobody objects to. But will all of this help or is it like the snake oil the lifetime medicine men used to con our grandparents with? Only time will tell.

Meanwhile, the small voice of the National Small Business Assn. has been raised. What this organization is proposing is, of course, somewhat self-serving, but in today's world that should surprise no one.

What is particularly intriguing about the NSBA suggestion is that it sounds sensible and just might work.

The organization has asked the Senate to consider "job creation credit," which could lead to swift hiring of up to two new employees by each of the nation's small businesses.

The plan would work this way: Small businesses would be permitted to hire one or two new employees and take a tax credit of up to 50 per cent of the cost of the added help, up to a maximum of \$20,000.

The NSBA had some other thoughts for the Senators, too, but the job proposal sounded best. Other suggestions were for a cut in taxes on those several million firms which earn less than \$25,000 per year, an increased investment credit up from the current 10 per cent to 20 per cent for manufacturers who are small by Small Business Administration standards, and incentive tax writeoffs for small businesses just getting started during this time of a soft national economy.

All but the jobs part of the package is little more than whistling in the dark. Big business gets the breaks in Washington. Witness the futile efforts to eliminate the oil-depletion allowance.

But why shouldn't Congress take the NSBA jobs plan seriously? It would provide useful jobs in the private sector, which indeed could and probably would become permanent as the economy turns upward later this year.

And what is important here is that the jobs would be useful. They would come from private firms contributing to the growth of the Gross National Product, not from the federal government trying to create jobs for the sake of creating jobs. And the type of jobs which the government will provide

aren't likely to be the productive type which boost the GNP.

In addition, the NSBA proposal would become a training school for thousands. These employed would be learning useful skills in a wide variety of occupations.

Raising the skills of the employable so that they can go on to better jobs, increasing the GNP and the simple act of creating jobs are widely believed to be the remedy for recession.

The NSBA job plan would do all three of these things, probably at a smaller price than the plans being rushed through Congress.

But don't make any bets that the plan will get off the ground. It is too sensible and comes from small business, which has a smaller voice than big business whose shouts are usually heard loud and clear in the halls of Congress.

[From the Palatka (Fla.) Daily News,

March 18, 1975]

DISTANCE FROM WASHINGTON TO GRASSROOTS OFTEN FAR

(By Lora Sinks Britt)

The long distance between Washington and the grass roots all over this country was never better pointed out than recent comments by Secretary of the Treasury William Simon before a panel of newsmen.

Comfortably seated in an atmosphere-controlled room and talking about unemployment and the economy in general, Mr. Simon said that the average income for people of the United States is \$14,000 a year and that President Ford would surely see about the unemployment problem. Wasn't he already doing so with the many manpower programs in effect?

Someone should tell Mr. Simon that while \$14,000 may be the average American income, it takes six \$8,000 incomes and one \$50,000 income to come up with that average. In many areas of the country, including most of the South, \$8,000 incomes are far more "average" than \$14,000 incomes. In an area like Washington where incomes are high, it probably is hard for Mr. Simon to realize that many families never see even \$8,000 a year.

Wasn't Mr. Ford already doing something about unemployment with the many manpower programs in effect? asked Mr. Simon rhetorically when questioned by the panel.

These words might have allayed the Washington reporters whose world also revolves around the nation's capital; however, not those who are in direct contact at the grass roots.

In Putnam County, for example, during February, 868 unemployed make application for unemployment claims. This number did not include the unemployed who did not file claims. One hundred seventy-five of these were new claims. At the same time, under CETA, a federal program created especially for the unemployed, 7 positions were made available and filled. At this rate, the government's program will hardly be a drop in the proverbial bucket.

Undoubtedly, Mr. Simon and others in Washington mean well in their observations about the country's economy, but with statements like those of the Treasury Secretary heard on the panel discussion, it is hard to believe that they have a true picture.

The country must look to other ways to resolve the recession, because creating jobs by the government will not do it all, nor is it giving substantial assistance, if CETA figures are a gauge.

One way to generate up to a million new jobs in private business has been proposed by the National Small Business Association (NSB.) Milton D. Stewart, president of NSB, has asked the Senate Finance Committee to provide a "job creation credit" which could

June 25, 1975

CONGRESSIONAL RECORD—SENATE

S 11555

agency directly involved the apprehension, detention, pretrial release, posttrial release, prosecution, defense, adjudication, or rehabilitation of accused persons or criminal offenders or the collection, storage, dissemination, or usage, of criminal justice information.

(4) "Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities but only to the extent that it does so.

(5) "Criminal justice information" means arrest record information, nonconviction record information, conviction record information, criminal history record information, and correctional and release information. The term does not include criminal justice investigative information or criminal justice intelligence information.

(6) "Arrest record information" means notations of arrest, detention, indictment, filing of information, or other formal criminal charge on an individual which does not include the disposition arising out of that arrest, detention, indictment, information, or charge.

(7) "Criminal history record information" means arrest record information and any disposition arising therefrom.

(8) "Conviction record information" means criminal history record information disclosing that a person has pleaded guilty or nolo contendere to or was convicted of any criminal offense in a court of justice, sentencing information, and whether such plea or judgment has been modified or reversed.

(9) "Nonconviction record information" means criminal history record information which is not conviction record information.

(10) "Disposition" means information disclosing that a decision has been made to bring criminal charges or that criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(11) "Correctional and release information" means information on an individual compiled in connection with bail or pretrial or posttrial release proceedings, reports on the physical or mental condition of an alleged offender, reports on presentence investigations, reports on inmates in correctional institutions or participants in rehabilitation programs, and probation and parole reports.

(12) "Criminal justice investigative information" means information associated with an identifiable individual compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific criminal act including information pertaining to that criminal act derived from reports of informants and investigators, or from any type of surveillance. The term does not include criminal justice information nor does it include initial reports filed by a criminal justice agency describing a specific incident, not indexed or accessible by name and expressly required by State or Federal statute to be made public.

(13) "Criminal justice intelligence information" means information associated with an identifiable individual compiled by a criminal justice agency in the course of conducting an investigation of an individual relating to possible future criminal activity of an individual, or relating to the reliability of such information, including information derived from reports of informants, investigators, or from any type of surveillance. This term does not include criminal justice information nor does it include initial reports filed by a criminal justice agency describing a specific incident, not indexed or accessible by name and expressly required by State or Federal statute to be made public.

(14) "Judge of competent jurisdiction" means (a) a judge of a United States district

court or a United States court of appeals; (b) a Justice of the Supreme Court of the United States; (c) a judge of any court of general criminal jurisdiction in a State; or (d) for purposes of section 208(b)(5), any other official in a State who is authorized by a statute of that State to enter orders authorizing access to sealed criminal justice information.

(15) "Attorney General" means the Attorney General of the United States.

(16) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

APPLICABILITY

SEC. 103. (a) This Act applies to criminal justice information, criminal justice investigative information, or criminal justice intelligence information maintained by criminal justice agencies—

(1) of the Federal Government,

(2) of a State or local government and funded in whole or in part by the Federal Government,

(3) which exchange information interstate, and

(4) which exchange information with an agency covered by paragraph (1), (2), or (3) but only to the extent of that exchange.

(b) This Act applies to criminal justice information, criminal justice investigative information and criminal justice intelligence information obtained from a foreign government or an international agency to the extent such information is commingled with information obtained from domestic sources. Steps shall be taken to assure that, to the maximum extent feasible, whenever any information subject to this Act is provided to a foreign government or an international agency, such information is used in a manner consistent with the provisions of this Act.

(c) The provisions of this Act do not apply to—

(1) original books of entry or police blotters, whether automated or manual, maintained by a criminal justice agency at the place of original arrest or place of detention, not indexed or accessible by name and required to be made public;

(2) court records of public criminal proceedings or official records of pardons or paroles or any index thereto organized and accessible by date or by docket or file number, or organized and accessible by name so long as such index contains no other information than a cross reference to the original pardon or parole records by docket or file number;

(3) public criminal proceedings and court opinions, including published compilations thereof;

(4) records of traffic offenses maintained by departments of transportation, motor vehicles, or the equivalent, for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' licenses;

(5) records relating to violations of the Uniform Code of Military Justice but only so long as those records are maintained solely within the Department of Defense; or

(6) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

TITLE II—COLLECTION AND DISSEMINATION OF CRIMINAL JUSTICE INFORMATION, CRIMINAL JUSTICE INVESTIGATIVE INFORMATION, AND CRIMINAL JUSTICE INTELLIGENCE INFORMATION, DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE INFORMATION—CRIMINAL JUSTICE AGENCIES

SEC. 201. (a) With limited exceptions hereafter described, access to criminal justice information, criminal justice investigative information, and criminal justice intelligence information shall be limited to authorized

officers or employees of criminal justice agencies, and the use or further dissemination of such information shall be limited to purposes of the administration of criminal justice.

(b) The use and dissemination of criminal justice information shall be in accordance with criminal justice agency procedures reasonably designed to insure—

(1) that the use or dissemination of arrest record information or nonconviction record information is restricted to the following purposes—

(A) The screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants.

(B) The commencement of prosecution, determination of pretrial or posttrial release or detention, the adjudication of criminal proceedings, or the preparation of a presentence report,

(C) The supervision by a criminal justice agency of an individual who had been committed to the custody of that agency prior to the time the arrest occurred or the charge was filed,

(D) The investigation of an individual when that individual has already been arrested or detained,

(E) The development of investigative leads concerning an individual who has not been arrested, when there are specific and articulable facts which, taken together with rational inferences from those facts, warrant the conclusion that the individual has committed or is about to commit a criminal act and the information requested may be relevant to that act.

(F) The alerting of an official or employee of a criminal justice agency that a particular individual may present a danger to his safety, or

(G) Similar essential purposes to which the information is relevant as defined in the procedures prescribed pursuant to this section; and

(2) that correctional and release information is disseminated only to criminal justice agencies; or to the individual to whom the information pertains, or his attorney, where authorized by Federal or State statute, court rule, or court order.

IDENTIFICATION AND WANTED PERSON INFORMATION

SEC. 202. Personal identification information, including fingerprints, voice prints, photographs and other physical descriptive data, may be used or disseminated for any official purpose, but personal identification information which includes arrest record information or criminal history record information may be disseminated only as permitted by this Act. Information that a person is wanted for a criminal offense and that judicial process has been issued against him, together with an appropriate description and other information which may be of assistance in locating the person or demonstrating a potential for violence, may be disseminated for any authorized purpose related to the administration of criminal justice. Nothing in this Act prohibits direct access by a criminal justice agency to automated wanted person information.

DISSEMINATION, ACCESS AND USE OF CRIMINAL JUSTICE INFORMATION—NONCRIMINAL JUSTICE AGENCIES

SEC. 203. (a) Except as otherwise provided by this Act, conviction record information may be made available for purposes other than the administration of criminal justice only if expressly authorized by Federal or State statute.

(b) Arrest record information indicating that an indictment, information, or formal charge was made against an individual within twelve months of the date of the request for the information, and is still pending, may be made available for a purpose other than the administration of criminal justice if ex-

pressly authorized by Federal or State statute. Arrest record information made available pursuant to this subsection may be used pursuant to this subsection may be used only for the purpose for which it was made available and may not be copied or retained by the requesting agency beyond the time necessary to accomplish that purpose.

(c) When conviction record information or arrest record information is requested pursuant to subsections (a) or (b), the requesting agency or individual shall notify the individual to whom the information relates that such information about him will be requested and that he has the right to seek review of the information prior to its dissemination.

(d) Criminal justice information may be made available to qualified persons for research related to the administration of criminal justice.

(e) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Immigration and Naturalization Service, consular officers, and officers and employees of the Visa Office of the Department of State, who require such information for the purpose of administering the immigration and nationality laws. The Attorney General and Secretary of State shall adopt internal operating procedures reasonably designed to insure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no decision adverse to an individual is based on arrest record information unless there has been a review of the decision at a supervisory level.

(f) A criminal justice agency may disseminate criminal justice information, upon request, to officers and employees of the Bureau of Alcohol, Tobacco, and Firearms, the United States Customs Service, the Internal Revenue Service and the Office of Foreign Assets Control of the Department of the Treasury, who require such information for the purpose of administering those laws under their respective jurisdictions. The Attorney General and the Secretary of the Treasury shall adopt internal operating procedures reasonably designed to insure that arrest record information received pursuant to this subsection is used solely for the purpose of developing further investigative leads and that no decision adverse to an individual is based on arrest record information unless there has been a review of the decision at a supervisory level.

(g) The Drug Enforcement Administration of the United States Department of Justice may disseminate criminal record information to federally registered manufacturers and distributors of controlled substances for use in connection with the enforcement of the Controlled Substances Administration Act.

(h) Nothing in this Act prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, if such disclosure is reasonably contemporaneous with the event to which the information relates. Nor is a criminal justice agency prohibited from confirming prior arrest record information or criminal record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by section 103(b) from the application of this Act.

DISSEMINATION, ACCESS, AND USE OF CRIMINAL JUSTICE INFORMATION—APPOINTMENTS AND EMPLOYMENT INVESTIGATIONS

Sec. 204. (a) A criminal justice agency may disseminate criminal justice information, whether or not sealed pursuant to section 208, criminal justice intelligence information, and criminal justice investigative information to a Federal, State, or local government official who is authorized by law to appoint or nominate judges, executive officers of law enforcement agencies or members of the Commission on Criminal Justice Information created under section 301 or any State board or agency created or designated pursuant to section 307, and to any legislative body authorized to approve such appointments or nominations. The criminal justice agency shall disseminate such information concerning an individual only upon notification from the appointing or nominating official that he is considering that individual for such an office, or from the legislative body that the individual has been nominated for the office, and that the individual has been notified of the request for such information and has given his written consent to the release of the information.

(b) A criminal justice agency may disseminate arrest record information and criminal history record information to an agency of the Federal Government for the purpose of an employment application investigation, an employment retention investigation, or the approval of a security clearance for access to classified information, when the Federal agency requests such information as a part of a comprehensive investigation of the history and background of an individual, pursuant to an obligation to conduct such an investigation imposed by a Federal statute or Federal executive order, and pursuant to agency regulations setting forth the nature and scope of such an investigation. Arrest record information or criminal history record information that has been sealed may be made available only for the purpose of the approval of a security clearance. For investigations concerning security clearances for access to information classified as top secret, criminal justice intelligence information and criminal justice investigative information may be made available pursuant to this subsection. At the time he files his application, seeks a change of employment status, applies for a security clearance, or otherwise causes the initiation of the investigation, the individual shall be put on notice that such an investigation will be conducted and that access to this type of information will be sought.

(c) Any information made available pursuant to this section may be used only for the purpose for which it is made available and may not be redisseminated, copied, or retained by the requester beyond the time necessary to accomplish the purpose for which it was made available.

SECONDARY DISSEMINATION OF CRIMINAL JUSTICE INFORMATION

Sec. 205. Any agency or individual having access to, or receiving criminal justice information is prohibited, directly or through any intermediary, from disseminating such information to any individual or agency not authorized to have such information; except that correctional officials of criminal justice agencies, with the consent of an individual under their supervision to whom the information refers, may orally represent the substance of the individual's criminal history record information to prospective employers or other individuals if they believe that such representation may be helpful in obtaining employment or rehabilitation for the individual.

METHOD OF ACCESS TO CRIMINAL JUSTICE INFORMATION

Sec. 206. (a) Except as provided in section 203(d) or in subsection (b) of this section, a criminal justice agency may disseminate arrest record information or criminal history record information only if the inquiry is based upon identification of the individual to whom the information relates by means of name and other personal identification information. After the arrest of an individual, such information concerning him shall be available only on the basis of positive identification of him by means of fingerprints or other equally reliable identification record information.

(b) Notwithstanding the provisions of subsection (a), a criminal justice agency may disseminate arrest record information and criminal history record information for criminal justice purposes where inquiries are based upon categories of offense or data elements other than personal identification information if the criminal justice agency has adopted procedures reasonably designed to insure that such information is used only for the purpose of developing investigative leads for a particular criminal offense and that the individuals to whom such information is disseminated have a need to know and a right to know such information.

SECURITY, ACCURACY, AND UPDATING OF CRIMINAL JUSTICE INFORMATION

Sec. 207. (a) Each criminal justice agency shall adopt procedures reasonably designed as a minimum—

(1) to insure the physical security of criminal justice information, to prevent the unauthorized disclosure of the information and to insure that the criminal justice information is currently and accurately revised to include subsequently received information and that all agencies to which such information is disseminated or from which it is collected are currently and accurately informed of any correction, deletion, or revision of the information;

(2) to insure that criminal justice agency personnel responsible for making or recording decisions relating to dispositions shall as soon as feasible report such dispositions to an appropriate agency or individual for inclusion with arrest record information to which such dispositions relate;

(3) to insure that records are maintained and kept current for at least three years with regard to—

(A) requests from any other agency or person for criminal justice information, the identity and authority of the requestor, the nature of the information provided, the nature, purpose and disposition of the request, and pertinent dates; and

(B) the source of arrest record information and criminal history information; and

(4) to insure that criminal justice information may not be submitted, modified, updated, or removed from any criminal justice agency record or file without verification of the identity of the individual to whom the information refers and an indication of the person or agency submitting, modifying, updating, or removing the information.

(b) If the Commission on Criminal Justice Information finds that full implementation of this section is infeasible because of cost or other factors it may exempt the provisions of this section from application to information maintained prior to the effective date of this Act.

SEALING AND PURGING OF CRIMINAL JUSTICE INFORMATION

Sec. 208. (a) Each criminal justice agency shall adopt procedures providing as a minimum—

June 25, 1975

CONGRESSIONAL RECORD—SENATE

S 11557

(1) for the prompt sealing or purging of criminal justice information when required by State or Federal statute, regulation, or court order;

(2) for the prompt sealing or purging of criminal justice information relating to an offense by an individual who has been free from the jurisdiction or supervision of any criminal justice agency for a period of seven years, if the individual has previously been convicted and such offense is not specifically exempted from sealing by a Federal or State statute;

(3) for the sealing or purging of arrest record information after a period of two years following an arrest, detention, or formal charge, whichever comes first, if no conviction of the individual occurred during that period, no prosecution is pending at the end of the period, and the individual is not a fugitive; and

(4) for the prompt purging of criminal history record information in any case in which a law enforcement agency has elected not to refer the case to the prosecutor or in which the prosecutor has elected not to file information, seek an indictment or other formal criminal charge.

(b) Criminal justice information sealed pursuant to this section may be made available.

(1) in connection with research pursuant to subsection 203(d);

(2) in connection with a review by the individual or his attorney pursuant to section 209;

(3) in connection with an audit conducted pursuant to section 304 or 310;

(4) where a conviction record has been sealed and an indictment, information or other formal criminal charge is subsequently filed against the individual; or

(5) where a criminal justice agency has obtained an access warrant from a State judge of competent jurisdiction if the information sought is in the possession of a State or local agency, or from a Federal judge of competent jurisdiction if the information sought is in the possession of a Federal agency. Such warrants may be issued as a matter of discretion by the judge in cases in which probable cause has been shown that (A) such access is imperative for purposes of the criminal justice agency's responsibilities in the administration of criminal justice, and (B) the information sought is not reasonably available from any other source or through any other method.

(c) Access to any index of sealed criminal justice information shall be permitted only to the extent necessary to implement subsection (b). Any index of sealed criminal justice information shall consist only of personal identification information and the location of the sealed information.

ACCESS BY INDIVIDUALS TO CRIMINAL JUSTICE INFORMATION

INFORMATION FOR PURPOSES OF CHALLENGE

SEC. 209. (a) Any individual shall, upon satisfactory verification of his identity and compliance with applicable rules or regulations, be entitled to review any arrest record information or criminal history record information concerning him maintained by any criminal justice agency and to obtain a copy of it if needed, for the purpose of challenging its accuracy or completeness or the legality of its maintenance.

(b) Each criminal justice agency shall adopt and publish rules or regulations to implement this section.

(c) The final action of a criminal justice agency on a request to review and challenge criminal justice information in its possession as provided by this section, or a failure to act expeditiously on such a request, shall be reviewable pursuant to a civil action under section 303.

(d) No individual who, in accord with this section, obtains information regarding him-

self may be required or requested to show or transfer records of that information to any other person or any other public or private agency or organization.

CRIMINAL JUSTICE INTELLIGENCE INFORMATION

SEC. 210. (a) Criminal justice intelligence information may be maintained by a criminal justice agency only for official criminal justice purposes. It shall be maintained in a physically secure environment and shall be kept separate from criminal justice information.

(b) Criminal justice intelligence information regarding an individual may be maintained only if grounds exist connecting such individual with known or suspected criminal activity and if the information is pertinent to such criminal activity. Criminal justice intelligence information shall be reviewed at regular intervals, but at a minimum whenever dissemination of such information is requested, to determine whether such grounds continue to exist, and if grounds do not exist such information shall be purged.

(c) Within the criminal justice agency maintaining the information, access to criminal justice intelligence information shall be limited to those officers or employees who have both a need to know and a right to know such information.

(d) Criminal justice intelligence information may be disseminated from the criminal justice agency which collected such information only to a Federal agency authorized to receive the information pursuant to section 204 or to a criminal justice agency which needs the information to confirm the reliability of information already in its possession or for investigative purposes if the agency is able to point to specific and articulable facts which taken together with rational inferences from those facts warrant the conclusion that the individual has committed or is about to commit a criminal act and that the information may be relevant to the act.

(e) When access to criminal justice information is permitted under subsection (c) or when such information is disseminated pursuant to subsection (d) a record shall be kept of the identity of the person having access or the agency to which information was disseminated, the date of access or dissemination, and the purpose for which access was sought or information disseminated. Such records shall be retained for at least three years.

(f) Direct remote terminal access to criminal justice intelligence information shall not be permitted. Remote terminal access shall be permitted to personal identification information sufficient to provide an index of subjects of criminal justice intelligence information and the names and locations of criminal justice agencies possessing criminal justice intelligence information concerning such subjects and automatically referring the requesting agency to the agency maintaining more complete information.

(g) An assessment of criminal justice intelligence information may be provided to any individual when necessary to avoid imminent danger to life or property.

CRIMINAL JUSTICE INVESTIGATIVE INFORMATION

SEC. 211. (a) Criminal justice investigative information may be maintained by a criminal justice agency only for official law enforcement purposes. It shall be maintained in a physically secure environment and shall be kept separate from criminal justice information. It shall not be maintained beyond the expiration of the statute of limitations for the offense concerning which it was collected or the sealing or purging of the criminal justice information related to such offense, whichever occurs later.

(b) Criminal justice investigative information may be disclosed pursuant to subsection 552(b)(7) of title 5 of the United

States Code or any similar State statute, or pursuant to any Federal or State statute, court rule, or court order permitting access to such information in the course of court proceedings to which such information relates.

(c) Except when such information is available pursuant to subsection (b), direct access to it shall be limited to those officers or employees of the criminal justice agency which maintains the information who have a need to know and a right to know such information and it shall be disseminated only to other governmental officers or employees who have a need to know and a right to know such information in connection with their civil or criminal law enforcement responsibilities. Records shall be kept of the identity of persons having access to criminal justice investigative information or to whom such information is disseminated, the date or access or dissemination, and the purpose for which access is sought or files disseminated. Such records shall be retained for at least three years.

(d) Criminal justice investigative information may be made available to officers and employees of government agencies for the purposes set forth in section 204.

TITLE III—ADMINISTRATIVE PROVISIONS; REGULATIONS, CIVIL REMEDIES; CRIMINAL PENALTIES

COMMISSION ON CRIMINAL JUSTICE INFORMATION

SEC. 301. CREATION AND MEMBERSHIP.—

(a) There is hereby created a Commission on Criminal Justice Information (hereinafter the "Commission") which shall have overall responsibility for the administration and enforcement of this Act. The Commission shall be composed of thirteen members. One of the members shall be the Attorney General and two of the members shall be designated by the President as representatives of other Federal agencies outside of the Department of Justice. One of the members shall be designated by the President on the recommendation of the Judicial Conference of the United States. The nine remaining members shall be appointed by the President with the advice and consent of the Senate. Of the nine members appointed by the President, seven shall be officials of criminal justice agencies from seven different States at the time of their nomination, representing to the extent possible all segments of the criminal justice system. The two remaining Presidential appointees shall be private citizens well versed in the law of privacy, constitutional law, and information systems technology, and shall not have been employed by any criminal justice agency within the five years preceding their appointments. Not more than seven members of the Commission shall be of the same political party.

(b) The President shall designate one of the seven criminal justice agency officials as Chairman and such designation shall also be confirmed by the advice and consent of the Senate. The Commission shall elect a Vice Chairman who shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(c) The designated members of the Commission shall serve at the will of the President. The Attorney General and the appointed members shall serve for terms of five years. Any vacancy shall not affect the powers of the Commission and shall be filled in the same manner in which the original appointment or designation was made.

(d) Seven members of the Commission shall constitute a quorum for the transaction of business.

SEC. 302. COMPENSATION OF MEMBERS.—

(a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at

June 25, 1975

S 11558

level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, operated on a daily basis for each day spent in the work of the Commission, and shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5 of the Administrative Expenses Act of 1946, as amended.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with the provisions of the Travel Expenses Act of 1949, as amended.

(c) Members of the Commission shall be considered "special Government employees" within the meaning of section 202(a) of title 18.

SEC. 303. DURATION OF COMMISSION.—The Commission shall exercise its powers and duties for a period of five years following the first appropriation of funds for its activities and the appointment and qualification of a majority of the members. It shall make a final report to the President and to the Congress on its activities as soon as possible after the expiration of the five year period and shall cease to exist thirty days after the date on which its final report is submitted.

SEC. 304. POWERS AND DUTIES.—

(a) For the purpose of carrying out its responsibilities under the Act, the Commission shall have authority—

(1) after consultation with representatives of criminal justice agencies subject to the Act, and after notice and hearings in accordance with the Administrative Procedures Act, to issue such regulations, interpretations and procedures as it may deem necessary to effectuate the provisions of this Act, including regulations limiting the extent to which a Federal criminal justice agency may perform telecommunications or criminal identification functions for state or local criminal justice agencies or include in its information storage facilities criminal justice information or personal identification information relative to violations of the laws of any state.

(2) to conduct hearings in accordance with section 305;

(3) to bring civil actions for declaratory judgments, cease-and-desist orders and such other injunctive relief as may be appropriate against any agency or individual for violations of the Act or of its rules, regulations, interpretations or procedures;

(4) to make studies and gather data concerning the collection, maintenance, use and dissemination of any information subject to the Act and compliance of criminal justice agencies and other agencies and individuals with the provisions of the Act;

(5) to require from each criminal justice agency information necessary to compile a directory of criminal justice information systems subject to the Act and publish annually a directory identifying all such systems and the nature, purpose and scope of each;

(6) to conduct such audits and investigations as it may deem necessary to ensure enforcement of the Act; and

(7) to delay the effective date of any provision of this Act for up to one year, provided that such delay is necessary to prevent serious adverse effects on the administration of justice.

(b) The Commission shall report annually to the President and to the Congress with respect to compliance with the Act and concerning such recommendations as it may have for further legislation. It may submit to the President and Congress and to the chief executive of any State such interim

reports and recommendations as it deems necessary.

SEC. 305. HEARINGS AND WITNESSES.—

(a) The Commission, or, on authorization of the Commission, any three or more members, may hold such hearings and act at such times and places as necessary to carry out the provisions of this Act. Hearings shall be public except to the extent that the hearings or portions thereof are closed by the Commission in order to protect the privacy of individuals or the security of information protected by this Act.

(b) Each member of the Commission shall have the power and authority to administer oaths or take statements from witnesses under affirmation.

(c) A witness attending any session of the Commission shall be paid the same fees and mileage paid witnesses in the courts of the United States. Mileage payments shall be tendered to the witness upon service of a subpoena issued on behalf of the Commission or any subcommittee thereof.

(d) Subpenas for the attendance and testimony of witnesses or the production of written or other matter, required by the Commission for the performance of its duties under this Act, may be issued in accordance with rules or procedures established by the Commission and may be served by any person designated by the Commission.

(e) In case of contumacy or refusal to obey a subpoena any district court of the United States or the United States court of any territory or possession, within the jurisdiction of which the person subpoenaed resides or is domiciled or transacts business, or has appointed an agent for the receipt of service or process, upon application of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee thereof, there to produce pertinent, relevant, and nonprivileged evidence if so ordered, or there to give testimony touching the matter under investigation; and any failure to obey such order of the court may be punished as contempt.

(f) Nothing in this Act prohibits a criminal justice agency from furnishing the Commission information required by it in the performance of its duties under this Act.

SEC. 306. DIRECTOR AND STAFF.—There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at the rate provided for level V of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5. The President shall consult with the Commission before submitting the nomination of any person for appointment as staff director. Within the limitation of appropriations and in accordance with the civil service and classification laws, the Commission may appoint such other personnel as it deems advisable: *Provided, however*, that the number of professional personnel shall at no time exceed fifty. The Commission may procure services as authorized by section 3109 of title 5, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-18 of the General Schedule under section 5332 of title 5.

STATE INFORMATION SYSTEMS REGULATIONS

SEC. 307. (a) The Commission shall encourage each of the States to create or designate an agency to exercise statewide authority and responsibility for the enforcement within the State of the provisions of the Act and any related State statutes, and to issue rules, regulations, and procedures, not inconsistent with this Act or regulations issued pursuant to it, regulating the maintenance, use, and dissemination of criminal justice information within the State.

(b) Where such agencies are created or designated, the Commission shall rely upon such agencies to the maximum extent possible for the enforcement of the Act within their respective States.

(c) Where any provision of this Act requires any criminal justice agency to establish procedures or issue rules or regulations, it shall be sufficient for such agencies to adopt or certify compliance with appropriate rules, regulations, or procedures issued by any agency created or designated pursuant to subsection (a) of this section or by any other agency within the State authorized to issue rules, regulations, or procedures of general application, provided such rules, regulations, or procedures are in compliance with the Act.

CIVIL REMEDIES

SEC. 308. (a) Any person aggrieved by a violation of this Act or regulations promulgated thereunder shall have a civil action for damages or any other appropriate remedy against any person or agency responsible for such violation. An action alleging a violation of section 209 shall be available only after any administrative remedies established pursuant to that section have been exhausted.

(b) The Commission on Criminal Justice Information System shall have a civil action for declaratory judgments, cease and desist orders, and such other injunctive relief as may be appropriate against any criminal justice agency in order to enforce the provisions of the Act.

(c) If a defendant in an action brought under this section is an officer or employee or agency of the United States the action shall be brought in an appropriate United States district court. If the defendant or defendants in an action brought under this section are private persons or officers or employees or agencies of a State or local government, the action may be brought in an appropriate United States district court or in any other court of competent jurisdiction. The district courts of the United States shall have jurisdiction over actions described in this section without regard to the amount in controversy.

(d) In any action brought pursuant to this Act, the court may in its discretion issue an order enjoining maintenance or dissemination of information in violation of this Act or correcting records of such information or may order any other appropriate remedy, except that in an action brought pursuant to subsection (b) the court may order only declaratory or injunctive relief.

(e) In an action brought pursuant to subsection (a) any person aggrieved by a violation of this Act shall be entitled to actual and general damages but not less than liquidated damages of \$100 for each violation and reasonable attorneys' fees and other litigation costs reasonably incurred. Exemplary and punitive damages may be granted by the court in appropriate cases brought pursuant to subsection (a). Any person or agency responsible for violations of this Act shall be jointly and severally liable to the person aggrieved for damages granted pursuant to this subsection: *Provided, however*, that good faith reliance by an agency or an official or employee of such agency upon the assurance of another agency or employee that information provided the former agency or employee is maintained or disseminated in compliance with the provisions of this Act or any regulations issued thereunder shall constitute a complete defense for the former agency or employee to a civil damage action brought under this section but shall not constitute a defense with respect to equitable relief.

(f) For the purposes of this Act the United States shall be deemed to have consented to suit and any agency of the United States found responsible for a violation shall be